

**Introduced by Senator Pan**February 19, 2016

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An act to add Article 5 (commencing with Section 7523) to Chapter 21 of Division 7 of Title 1 of the Government Code, relating to public employees' retirement.

## LEGISLATIVE COUNSEL'S DIGEST

SB 1297, as introduced, Pan. Public employee retirement plans: automatic enrollment and escalation.

The California Constitution grants the retirement board of a public pension or retirement system plenary authority and fiduciary responsibility for investment of moneys and administration of the system, as specified.

Under existing law, public employees may participate in prescribed supplemental defined benefit plans and deferred compensation plans established or maintained by employers.

This bill, notwithstanding any other law, would authorize a state or local public employer participating in an employee retirement plan, defined to include certain defined benefit plans, deferred compensation plans, or payroll deduction individual retirement account plans, to make a deduction from the wages or compensation of an employee for contributions attributable to automatic enrollment and automatic escalation in the employee retirement plan. The bill would provide that an employer that provides automatic enrollment or automatic escalation in an employee retirement plan is not liable for the investment decisions made by the employer on behalf of any participating employee with respect to the default investment of contributions made for that employee to the plan, if specified requirements are met.

Vote: majority. Appropriation: no. Fiscal committee: yes.  
State-mandated local program: no.

*The people of the State of California do enact as follows:*

1 SECTION 1. Article 5 (commencing with Section 7523) is  
2 added to Chapter 21 of Division 7 of Title 1 of the Government  
3 Code, to read:

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5 Article 5. Public Employee Retirement Plans: Automatic  
6 Enrollment and Escalation  
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8 7523. As used in this article:

9 (a) “Automatic enrollment” means an employee retirement plan  
10 provision under which an employee will have a specified  
11 contribution made to the plan, equal to a compensation reduction,  
12 that will be made for the employee unless the employee  
13 affirmatively elects not to have any compensation reduction  
14 contributions or elects a compensation reduction contribution in  
15 an alternative amount, in accordance with the federal Pension  
16 Protection Act of 2006 (Public Law 109-280). An employee  
17 retirement plan may provide for automatic enrollment whether or  
18 not the employee retirement plan elects to provide for automatic  
19 escalation.

20 (b) “Automatic escalation” means an employee retirement plan  
21 provision under which an employee’s salary reduction contribution  
22 to the plan is increased by a specified amount annually up to the  
23 limits imposed by the Internal Revenue Code of 1986, as amended,  
24 unless the employee affirmatively elects not to have the automatic  
25 escalation amount deducted from compensation or elects an  
26 alternative contribution reduction amount.

27 (c) “Employee retirement plan” means a plan described in  
28 Sections 401(k) or 403(b), or a governmental deferred  
29 compensation plan described in Section 457, or a payroll deduction  
30 individual retirement account plan described in Sections 408 or  
31 408A, of the Internal Revenue Code of 1986, as amended.

32 7523.1. (a) This article shall apply to all state and local public  
33 employee retirement plans and to their participating employers.

1 (b) The administration of this article shall comply with  
2 applicable provisions of the Internal Revenue Code and the  
3 Revenue and Taxation Code.

4 7523.2. (a) Notwithstanding any other law, a state or local  
5 public employer participating in an employee retirement plan may  
6 make a deduction from the wages or compensation of an employee  
7 for contributions attributable to automatic enrollment and automatic  
8 escalation in the employee retirement plan, regardless of whether  
9 the plan is subject to the federal Employee Retirement Income  
10 Security Act of 1974, as amended (29 U.S.C. Sec. 1001 et seq.).

11 (b) (1) An employer that provides automatic enrollment or  
12 automatic escalation in an employee retirement plan is not liable  
13 for the investment decisions made by the employer on behalf of  
14 any participating employee with respect to the default investment  
15 of contributions made for that employee to the plan, if all of the  
16 following requirements are met:

17 (A) The plan provides the participating employee at least  
18 quarterly opportunities to select investments for the employee's  
19 contributions among investment alternatives available under the  
20 plan.

21 (B) The participating employee is given notice of the investment  
22 decisions that will be made in the absence of direction from the  
23 employee, a description of all the investment alternatives available  
24 for employee investment direction under the plan, and a brief  
25 description of procedures available for the employee to change  
26 investments.

27 (C) The employee is given at least annual notice of the actual  
28 default investments made of contributions attributable to the  
29 employee.

30 (2) The relief from liability of the employer under this section  
31 extends to any employee retirement plan official who makes the  
32 actual default investment decisions on behalf of participating  
33 employees.

34 (c) Nothing in this section modifies any existing responsibility  
35 of employers or other plan officials for the selection of investment  
36 funds for participating employees.

37 (d) Nothing in this section or any other law shall be construed  
38 as authorizing an employer to withhold or divert any portion of an  
39 employee's wages to pay any tax, fee, or charge prohibited by

- 1 Section 50026, whether or not the employee authorizes that
- 2 withholding or diversion.

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